

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

**FILED**  
IN CLERK'S OFFICE  
US DISTRICT COURT E.D.N.Y.

DEC 10 2019



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COMPANION TRADING CO., INC.,

Plaintiff,

v.

MEGA SECURITY CORP. and G.P.N.  
ENTERPRISES, INC.,

Defendants.  
-----X

BROOKLYN OFFICE

**DECISION & ORDER**  
13-CV-5755 (WFK) (CLP)

**WILLIAM F. KUNTZ II, United States District Judge:**

On October 21, 2013, Companion Trading Co. Inc. ("Plaintiff") filed a Complaint against Mega Security Corp. and G.P.N. Enterprises, Inc. (collectively, "Defendants"). *See* ECF No. 1. On April 15, 2014, Plaintiff filed an Amended Complaint alleging three causes of action pursuant to the Court's diversity jurisdiction. *See* ECF No. 15. Defendants filed an Answer to the Amended Complaint on October 22, 2015. *See* ECF No. 46.

On April 20, 2018, counsel for defendant Mega Security Corp. ("Mega") filed a Motion to Withdraw. *See* ECF No. 74. In view of counsel's pending withdrawal and defendant Mega's failure to obtain new counsel, on July 6, 2018, counsel for Plaintiff filed a letter addressed to Magistrate Judge Cheryl L. Pollak requesting to file a motion for default judgment. *See* ECF No. 76. According to Plaintiff's letter, defense counsel withdrew when Defendants' insurance company abandoned its support of Defendants pursuant to a New Jersey court order holding it was not obligated to cover the loss. *See id.*; *see also* ECF No. 80. On October 22, 2018, Magistrate Judge Pollak granted defense counsel's Motion to Withdraw and directed Defendants to obtain a new attorney within 30 days. *See* ECF No. 77. As of the date of this Order, Defendants have not obtained counsel in this action.

On May 17, 2019, this Court directed Plaintiff to file and to serve a motion for default judgment on Defendants on or before June 7, 2019. *See* ECF No. 79. At Plaintiff's request, the Court extended Plaintiff's time to file and to serve its motion to August 9, 2019. *See* ECF Nos. 80-81. The Court also scheduled a conference for September 24, 2019, which it adjourned to December 9, 2019. *See* ECF Nos. 81, 83. Plaintiff never filed the motion for default judgment, nor did Plaintiff secure an entry of default from the Clerk of Court. On December 9, 2019, the court held a conference in this action. Neither Plaintiff nor Defendants appeared, and the Court issued an oral ruling dismissing the action for abandonment and directing the Clerk of Court to close the case.

Rule 41(b) of the Federal Rules of Civil Procedure provides, in relevant part, "[f]or failure of the plaintiff to prosecute or to comply with . . . any order of the court, a defendant may move for dismissal of an action or any claim against the defendant." A district court has the inherent power to dismiss a case with prejudice for lack of prosecution pursuant to Rule 41(b). *See Link v. Wabash R.R. Co.*, 370 U.S. 626, 629 (1962). By failing to comply with this Court's order directing it to file and to serve a motion for default judgment and subsequently failing to attend the in-court conference scheduled for December 9, 2019, Plaintiff has failed to pursue its claim. The Court concludes Plaintiff's non-compliance warrants dismissal.

For the foregoing reasons, the above-captioned action is hereby DISMISSED without prejudice for failure to prosecute pursuant to Rule 41(b). The Clerk of Court is respectfully instructed to close the case.

**SO ORDERED.**

s/WFK

  
HON. WILLIAM F. KUNTZ, II  
UNITED STATES DISTRICT JUDGE

Dated: December 9, 2019  
Brooklyn, New York